MULTI-PURPOSE HOLDINGS BHD

v.

KETUA PENGARAH HASIL DALAM NEGERI

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[CIVIL APPEAL NO: R1-14-12-98]
26 SEPTEMBER 2001

REVENUE LAW: *Income tax - Chargeable income - Classes of chargeable income - Section 4 Income Tax Act 1967 - Whether open to further sub-division - Disintegration of groupings of profits and gains according to sources - Whether authorised by law - Income Tax Act 1967, ss. 4, 5, 33(1)*

The taxpayer herein ('the Taxpayer') is a holding and investment company and is earning income, *inter alia*, from the holding of shares in various companies and the giving of loans to related companies. In 1990 the respondent ('the Revenue') made assessments of the Taxpayer's chargeability to income tax for the years 1982 to 1988. In assessing the chargeable tax, however, the Revenue treated each counter of the Taxpayer's share investments and each deposit placed by the Taxpayer as a separate source of income, thereby increasing the Taxpayer's liability to tax. It was the Revenue's stand that the method of computation was in line with the provisions of s. 4 of the Income Tax Act 1967 ('the Act') read with s. 33(1) thereof. According to the Revenue, although s. 4 of the Act categorised chargeable income to six groups, sub-division of the groups, upon the proper interpretation of the word "source" in s. 33(1), is allowed. The Taxpayer appealed, arguing before the Special Commissioners of Income Tax ('the Special Commissioners') that the assessments were misconceived as sub-divisions of the groups of income were unauthorised by law. The Special Commissioners ruled that the sources of income as classified in s. 4 of the Act were not open to further fragmentation, and that the Revenue, therefore, had erred in its assessments. The Revenue appealed whereupon the same was submitted to the present court by way of a case stated.

Before the learned judge, questions arose as to: (i) whether the sources of income mentioned in s. 4 of the Act were indivisible and hence not open to further sub-division; and (ii) whether the assessments as raised by the Revenue were misconceived in law.

Held:

[1] It ought to be noted that the reference in s. 4 is a reference to "classes of income" chargeable to tax and 6 classes are mentioned, one of them being "gains and profits from a business" *ie*, s. 4(a), and another class being "dividends, interest and discounts" *ie*, s. 4(c). It ought to be further noted that s. 5 of the Act refers the manner of determining a taxpayer's chargeable income, and s. 5(1)(c) talks about "each source" which refers to a "source consisting of a business" as well as other sources. Since "business" income is the first class of income set out in s. 4(a), the other sources of income referred to in s. 5 must mean the sources of income set out in s. 4(b) to (f) which include "a dividend" source and an "interest" source of income in s. 4(c). Clearly, if Parliament had intended that each share and each loan should be regarded as separate sources, s. 4(c) would have been differently worded to reflect such intention.
(pp 468 i & 469 a-d)

[2] The Revenue could not further sub-divide each source by treating each counter of share investment as a separate source or apportion the dividend between income producing and non-income producing. To do so would disintegrate the groupings or categories further than what was authorised by the Act. The same principle applied to interest income.
(pp 469 e-f & 471 h)

[3] The Act identified the subject matter of taxation as "dividends" and "interest". That being the case, the Revenue is not vested with authority to split the classification in a manner that increased the Taxpayer's liability to tax. A taxing statute had to be strictly construed and tax cannot be imposed unless there are clear and unambiguous words which show an intention to tax a subject. (p 471 b)

[Appeal dismissed.]

Case(s) referred to:
Edwards v. Bairstow & Harrsion [1956] AC 14 ***(refd)***
Ketua Pengarah Jabatan Hasil Dalam Negeri v. Pernas Securities Sdn Bhd (R1-14-4-95) (unreported) ***(refd)***
Lower Perak Co-operative Housing Society v. KPKDN [1994] 3 CLJ 540 ***(refd)***
National Land Finance Co-operative v. DGIR [1993] 4 CLJ 339 ***(refd)***
River Estates Sdn Bhd v. DGIR [1984] 1 CLJ 21; [1984] 1 CLJ (Rep) 37 ***(refd)***

Legislation referred to:
Income Tax Act 1967, ss. 2, 4(a), (b), (c), (d), (e), (f), 5(1)(c), 22, 26, 33(1), 43, 44

For the respondent - Anand Raj; M/s Shearn Delamore & Co
For the appellant - Abu Tariq Jamaluddin; IRB

Reported by WA Sharif

JUDGMENT

KC Vohrah J:

This is an appeal by way of a case stated by the special commissioner of Income Tax (SC). It arises from the decision which the SC gave on 12 September 1998 in relation to an appeal by Multi-Purpose Bhd (the taxpayer) in respect of which both Ketua Pengarah Hasil Negeri (Revenue) and also the taxpayer required the SC to submit to this court.

The taxpayer, a company incorporated in 1975, has its principal business activity as a holding and investment company. It received income as dividend income from the holding of shares in various companies. It also received income as interest income from the giving of loans to related companies and from the placing of funds on short-term deposits. In addition the taxpayer received rental income and plantation income.

The issue in the matter is the chargeability of the taxpayer under the Income Tax Act 1967 (the Act) to income tax on the various types of income the taxpayer received for the years 1982 to 1988.

Revenue adopted a method of computation of such income which is challenged by the taxpayer.

What revenue did was to treat each counter of the share investment as a separate source of the taxpayer's income. Revenue also treated each loan given by the taxpayer as a separate source of income of the taxpayer's source of income. Additionally, the revenue treated each deposit placed by the taxpayer as a separate source of income of the taxpayer's income.

Revenue, using its method of computation, accordingly on 2 July 1990, assessed by way of notice of assessment for the years 1982, 1983, 1984, 1985 the following taxes chargeable:

(a) 1982 - RM3,553,747.60

(b) 1983 - RM6,590,434.80

(c) 1984 - RM3,553,460.80

(d) 1985 - RM10,998,096

Revenue issued computations for the years 1986, 1987 and 1988 the following taxes chargeable:

(e) 1986 - RM15,239,192.75

(f) 1987 - RM3,676,567.62

(g) 1988 - RM1,016,784.55

I shall deal with the findings which the SC made in relation to the issues raised by revenue but have dropped those raised by the taxpayer in its cross-appeal relating to interest expenses and management fees since a consent order dated 23 May 2000 has been made in respect of these matters.

Before the SC and before this court it was contended by the taxpayer that the assessments raised by revenue are misconceived in law in that, *inter alia*:

(a) the dividend income of the taxpayer for each of the years of assessment 1982 to 1988 should be treated as a distinct and singular source of income however or from wherever derived, in arriving at the taxpayer's adjusted income under s. 33 of the Act;

(b) the interest income of the taxpayer for each of the years of assessment 1982 to 1988 should be treated as a separate and singular source of income however or from wherever derived, in arriving at the taxpayer's adjusted income under s. 33 of the Act.

It was also contended that the scheme of the Act by which chargeable income is to be ascertained has been ignored and the sources of income have been arbitrarily fragmented by revenue into further sub-divisions and in a manner unauthorised by law.

It was further contended that there was a failure on the part of revenue to recognise that income from all sources ie, investment sources (dividends) or loan and deposit sources (interest) and other sources will have to be aggregated pursuant to s. 43 of the Act, subject to express restrictions and disallowances as authorised under the Act.

On the other hand revenue contended before the SC and before this court that each of the counters of share investment of the taxpayer, each loan given and all deposits placed by the taxpayer constitute separate sources of income.

This is what the SC decided:

> We are satisfied that the Appellant (the Taxpayer) has successfully discharged the onus of proving that the Respondent's (Revenue's) assessments in respect of issues (a) and (b) are erroneous as envisaged in paragraph 13 of Schedule 5 of the Act ...
>
> Accordingly, we unanimously decided that the appeal in respect of:
>
> (a) the dividend income be allowed;

(b) the interest income be allowed except those borrowings which were subsequently given as interest-free loans:

(c) ...

(d) ..

The reasoning of the SC was this – after discussing ss. 2, 4, 5, 22, 26, 33 and 44 of the Act and several cases, including the unreported case of *Ketua Pengarah Jabatan Hasil Dalam Negeri v. Pernas Securities Sdn Bhd*, (R1-14-4-95), *Merrifield v. The Wallpaper Manufacturers Ltd* 16 TC 40 and *Diggines v. Forestal Land, Timber & Railways Co Ltd* 15 TC 630:

> Income which is chargeable to tax are categorised under six groups by s. 4 of the Act ie, paras. (a) to (f). Based on the principle in the cases discussed above, the respondent cannot further sub-divide each source by treating each counter of share investment as a separate source or apportion the dividend between income producing and non-income producing. To treat each counter of share investment as a separate source is undoubtedly disintegrating the grouping or categories further than what is authorised by the Act.
>
> Further, section 4 of the Act by itself or read together with section 26 of the Act would seem that the words 'all gross income from that source ...' and 'shall be taken to be gross income of the relevant person' in section 26 (sic) point to the dividends being assessed *in globo* and not the dividend from each counter separately.

The SC accordingly made a finding that in respect of share income, all counters of shares relating to the case whether income producing or non-income producing are a single source of income under s. 4(c) of the Act and that the same principle equally applied to interest income.

In faulting the findings of the SC the argument of revenue is that the decision of the SC is wrong in law and is not consistent with their findings of fact relying on the principles enunciated by Lord Radcliffe in *Edwards v. Bairstow & Harrsion* [1956] AC 14 (and adopted in *Lower Perak Co-operative Housing Society v. KPKDN* [1994] 3 CLJ 540):

> If the case contains anything *ex facie* which is bad in law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think it matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination.

What is supposedly wrong in law? The criticism of revenue must be viewed, *inter alia*, in the context of s. 4 on which the SC relied principally. Section 4 reads:

> 4. Subject to this Act, the income upon which tax is chargeable under this Act is income in respect of:
>
> (a) gains or profits from a business, for whatever period of time carried on;
>
> (b) gains or profits from an employment;
>
> (c) dividends, interest or discounts;
>
> (d) rents, royalties or premiums;
>
> (e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;
>
> (f) gains or profits not falling under any of the foregoing paragraphs.

It will be recollected that the view of the SC is that income which is chargeable to tax are categorised under six groups and that revenue cannot further sub-divide each source by treating each counter of share and each loan as a separate source; to treat each counter and each loan as a separate source is undoubtedly to disintegrate the groupings or categories further than that what is authorised by the Act.

Revenue challenges the SC's view on the indivisibility of each source mentioned in s. 4.

Revenue adverts to s. 33(1) of the Act which governs deduction of interest as an expense for its argument on the concept of source. Section 33(1) reads:

> 33.(1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source including ... .

Revenue in relating s. 4 to s. 33(1) contends that the word "source" which occurs in s. 33(1) of the Act refers to "the activity or property which produces the income," ie, the word refers to "the originating cause of the income." Neither "business", "employment", "dividends" nor "interest", words used under s. 4 of the Act, is a "source" by itself and that the word "source" refers to each counter of shares and each loan.

Revenue also argues that while the statutory definition given in the Act to the word "source" is unhelpful in determining its meaning that can be gleaned from judicial pronouncements of the Privy Council and of the High and the Federal Courts in *River Estates Sdn Bhd v. DGIR*. Both the High Court and Federal Court cases are reported in [1984] 1 MLJ 1; the Privy Council, [1984] 1 CLJ 21; [1984] 1 CLJ (Rep) 37. Revenue again submitted that the case showed that the word "source" must mean "the activity or property which produce the income." Revenue also stressed that the decisions of the High and Federal Courts in that case relied on what Rowlatt J had stated in *Scales v. George Thomson & Co* 13 TC 83:

> This company carried on the business of underwriting. It also had a fleet of steamers. I cannot conceive two businesses that could be more easily separated than those two. They both have something to do with ships; that is all that can be said about them. One does not depend upon the other; they are not interlaced; they do not dovetail into each other, except that the people who are in them know about ships; but the actual conduct of the business shows no dovetailing of the one into the other at all. They might stop the underwriting; it does not affect the ships. They might stop the ships and it does not affect the undertaking. They might carry on underwriting in a country where there were no ships; except that it would not be commercially convenient: but the two things have nothing whatever to do with one another.

Let me deal with the two cases that revenue relied on, *River Estates* & *Scales*. In *River Estates* the question referred to the special commissioner was one of fact and all three courts agreed that it was so – whether the appellant was carrying on one or more than one business. The Privy Council refused to interfere with the decision of the special commissioners that they were separate business holding that while the two types of businesses that were carried out could be included in one business, equally they could be separate business and that either conclusion was open to the commissioners and it was difficult to assert that either conclusion is the true one. As for the meaning of the word "source" the JCPC did make reference to its recurrence in several statutory provisions and made the observation that the law uses the concept of "source" in the determination of income and that the Act recognises the existence of a source consisting of a business, but did not discuss the concept relating to the word. The JCPC referred cursorily to *Scales* in the context of whether there was any interlocking or interdependence embracing two businesses. In any event *Scales* dealt with the meaning of "business" and not the meaning of "source". Thus *Scales* has no bearing on the meaning of "source".

I refer to the provisions of s. 4 set out earlier in this decision. The reference in s. 4 is a reference to "classes of income" chargeable to tax and six classes are mentioned, one of them being "gains of profits from a business" (s. 4(a)) and another class being "dividends, interest or discounts" (s. 4(c)).

Next the manner in which a taxpayer's chargeable income under s. 5 of the Act is to be ascertained should be looked into. Section 5(1)(c) reads:

> 5(1) ...
>
> (a) ...
>
> (b) Next, his adjusted income from each source (or, in the case of a source consisting of a business, his adjusted income or adjusted loss from that source) for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part; ... .

As the taxpayer has asked, what does "each source" in s. 5(1)(c) refer to? It seems to me that it refers to a "source consisting of a business" as well as other sources. What are these sources? Since "business" income is the first class of income set out in s. 4(a), the other sources of income referred to in s. 5 must mean the sources of income set out in s. 4(b) to (f) which include a "dividend" source and an "interest" source of income in s. 4(c).

Thus I agree with the submission of the taxpayer that if Parliament intended that each share and each loan should be regarded as separate sources, s. 4(c) would be differently worded to reflect that.

As has been mentioned earlier the SC were of the view that revenue cannot further sub-divide each source by treating each counter of share investment as a separate source or apportion the dividend between income producing and non-income producing and held that to treat each counter of share investment as a separate source is undoubtedly disintegrating the grouping or categories further than what is authorised by the Act. The SC held the same principle applied to interest income.

The SC had examined several cases for coming to this view amongst them *Pernas Securities*, *Merrifield* and *Diggines*

In regard to *Pernas Securities* the Special Commissioners had held at (1995) MSTC 2256 at 2263:

> To treat each counter of share investment as a separate source is without doubt to disintegrate the grouping further than that which is authorised by the Income Tax Act 1967.

There was an appeal by Revenue but the High Court dismissed the appeal on 4 February 1997 (see R1-14-4-95). No grounds of judgment were issued by the High Court but revenue did not appeal against the decision of the High Court.

In *Pernas Securities Sdn Bhd* and in our case *Merrifield* and *Forestal* were considered. I agree with the views of the SC in our case and the taxpayer that the court in both the English cases construed statutory language which is conceptually similar to the language used in our Malaysian Act.

Rowlatt J in *Merrifield* at 43 asked this question at the beginning of his judgment:

> The question this case I think may be stated thus: When, in the Rule applicable to Case 111, Rule 1(f) we find the words "securities issued under the War Loan Acts", does that phrase designate one taxable subject-matter, or is it a generic expression comprising a number of subjects of taxation which do not lose their separate identity by being described by one comprehensive description?

Our Act which is set out in generic terms also adopts a comprehensive description of sources in s. 4 ie, "dividends, interest ... royalties, rents", etc. This is how Rowlatt J approached the question:

> Now it seems to me that in approaching that question one ought to approach it in this way. The Income Tax Acts are a tax upon the yearly profits and gains of the subject, and among the yearly profits and gains, upon interest on money, and the whole field of yearly profits and gains is split up and sub-divided for the purposes of different methods of charging, different methods of assessment, and so on; but it seems to me that, the tax being in the first instance upon profits and gains, one ought not to disintegrate the groupings of the profits and gains, further than the Acts affirmatively require. I think the idea that really underlies the decision of the House of Lords in the *Forestal* case is that when you find a thing grouped in one, you are not to sub-divide it further unless there is some reason for it ...

Our Act also creates taxes upon yearly gains and profits of a taxpayer and they are classified under s. 4 and there is no sub-division shown therein.

It will be noticed that Rowlatt J goes further in entrenching the force of his finding by identifying the interest, and not merely the security from whence it came, as the subject matter of annual taxation:

> Then when one comes on to the securities issued under the War Loan Acts, I do not find any authority for splitting that up. I go back to what I started with. You are taxing interest, and what you are saying is "interest from various sources", and the ITA says 'interest from any securities under the War Loan Acts'. That interest is the subject-matter of the taxation, interest from securities under a certain number of Acts. Well, there it is; that is the subject-matter of taxation, and I do not see any affirmative justification or any positive authority for saying that that means the several sums which you get from the several investments which can comprehensively be described as being covered by this

group of Acts of Parliament. I think the *Forestal Land* case gives great guidance in this matter, and on the grounds that I have expressed, I come to the conclusion that this appeal ought to be dismissed with costs.

It will be noticed that our Act identifies the subject-matter of taxation as "dividends" and "interest". One may ask relevantly, where is the revenue's authority to split this classification up in a manner that increases the taxpayer's liability to tax? A taxing statute has to be strictly construed and tax cannot be imposed unless there are clear and unambiguous words which show an intention to tax a subject: Supreme Court, *National Land Finance Co-operative v. DGIR* [1993] 4 CLJ 339. Clearly there is no authority to disintegrate the groupings of the profits and gains according to sources.

I do not think it would be necessary quote *in extenso* what the Law Lords stated in *Forestal* relied upon by Rowlatt J for guidance in *Merrifield.* Suffice it to say the question asked by Lord Warrington of Clyffe at 85 and the answer he then stated at 87 provide illumination:

> The question in this appeal is whether, as the respondents maintain, the assessments should be made upon the footing that each holding of shares is a separate source of income separately assessable, or, as the Crown contends, the assessment for each year should be arrived at by treating the full amount of the dividends as arising from one source of income only, *viz*: the aggregate of the stocks and shares for the time being held by the company.
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> ...
>
> With all respect to these learned judges I cannot agree with their views. Looking at the words of the Rule by itself, and construing them according to their natural meaning, I think the income there referred to is the income arising from the class of foreign possessions thereby dealt with, and not the income arising from a number of items making up that class, and I can see no justification for departing from what I conceive to be the natural meaning. On the contrary, the fact that the words describing Case IV and the first two Rules under Case V effect a division for purposes of computation between (1) securities (2) stocks, shares of rents and (3) other foreign possessions indicates an intention on the part of the legislature that such division is to be final and that the further division contended for in this case was not intended to be made.

There is no justification for revenue to disintegrate the groupings of profits and gains according to sources which have been specified under s. 4 of the Act and clearly the SC were right in holding so.

I fail to see any error of law in the decision of the SC on the facts stated by them. The appeal is dismissed with costs.